IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION No. 3096 of 1997

Shri Sabu Tipanna Gunapur,
adult, occupation : service,
residing at : At & Post Vijapur,
Allapur West,
Karnatak 586101. ... Petitioner

vs.

1. Union of India,
   Ministry of Railway,
   New Delhi.
2. The Security Officer,
   Railway Protection Force,
   The then South Central Railway
   and now Central Railway, Solapur.
3. The then Chief Security Officer,
   Railway Protection Force and
   now Director General of Railway
   Protection Force, South Central
   Railway, Secundarabad,
   Andhra Pradesh.
4. The General Manager,
   South Central Railway,
   Secundarabad, Andhra Pradesh. ... Respondents

Mr. D. V. Gangal for petitioner
Mr. Sureshkumar for respondent no. 2.

CORAM: R.M.S. KHANDEPARKAR
&
SMT. ROSHAN DALVI JJ.
DATE: 27/4/2006

ORAL JUDGMENT (Per ROSHAN DALVI J.)

1. The Petitioner has challenged the order of dismissal dated 2.3.1977 and prayed for a writ of mandamus directing the Respondents to reinstate the Petitioner in the post of Rakshak No. 76917 and to give him all consequential benefits thereupon.
2. The Petitioner was dismissed from service upon the case of the Respondents of theft of 28 bags of sugar along with 9 other Rakshaks two decades before the Petition was filed.
3. Certain criminal proceedings being Criminal case no. 6902 of 1976 initiated by the State of Maharashtra ended in acquittal of the Petitioner as well as other Rakshaks on 18.4.1980.
4. Though the Petitioner has not stated his age in the title of the Petition as per the requirements of procedure, he is stated to be beyond the retirement age at present.
5. It would be for the Petitioner to show how the enquiry proceedings against him, culminating in his retirement, were so erroneously conducted that his dismissal order dated

2.3.1977 would be required to be set aside in this writ petition. The Petitioner did not challenge the dismissal order for 20 years. The Respondents are not expected to keep the papers of the enquiry proceedings with them to justify their action for as long as 20 years. It would be impossible for the Respondents to meet the case of the Petitioner in the absence of the papers and proceedings.

6. In these circumstances it would have to be considered whether the Petition would stand barred by gross latches. The explanation of the Petitioner is in para 15 of the Petition. It states that the Petitioner is extremely poor person and that he was not having the knowledge of the legal procedure. This explanation is most inadequate to explain the inordinate delay of 20 years. The same explanation was already given by the Petitioner even at the time of filing of the Petition and thereafter.

7. Both the parties have relied upon several judgments to show if the delay should or should not be condoned. The judgments relied upon by the Petitioner show how delay of 4 days, 2 years, and even 10 years was condoned. In the case

of M/s. Tilokchand Motichand vs. H.B. Munshi, Commissioner of Sales Tax, Bombay & anr. reported in AIR 1970 S. C. 898 relied upon by the Petitioner himself, the delay of 10 years in filing the Petition for recovery of payment made towards sales tax under a mistake of law, after the Bombay Sales Tax Act, 1946 was struck down as ultra virus Article 19(1)(g) of the Constitution, was held uncondonable. It was observed that in such cases utmost expedition is the sine qua non for such claims and the party aggrieved must explain satisfactorily all semblance of delay. It was further observed that avoidable delay will disentitle a party to invoke the extra ordinary jurisdiction, though it was held that the question of condoning the delay depends upon the discretion of the court, differing from case to case with no lower or upper limits and the court would entertain a petition even after a lapse of time. It was held in the very case that delay of 10 yeas should not be condoned.

8. However, in the case of R.S. Makashi & ors. vs. I.M. Menon and ors., reported in AIR 1982 S.C. 101 delay of 10 years was condoned when a Government Resolution , which was not in

consonance with a gradation list earlier published, was challenged. The challenge to a Resolution is an act different from claiming reinstatement and consequential benefits, upon the premises that the order of dismissal held in enquiry proceedings was illegal and bad.

9. In the case of Ramchandra Shankar Deodhar ande ors. vs. The State of Maharashtra & ors., reported in AIR 1974 S.C. 259 the principle for the exercise of discretion has been laid down. The refusal of relief on the ground of laches is that the rights which have accrued by reason of delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. In this case rights have accrued to the Respondents for a period of two decades which cannot be allowed to be disturbed by the Petitioner filing the Petition at the fag end of his career as Rakshak to claim reinstatement and consequential benefits. In fact the entire claim at such a stage smacks of lack of bona fides. It is neither averred nor shown by the Petitioner that he was not employed during all those two decades to claim reinstatement. The other consequential benefits would follow

as a matter of corollary. The Petitioner would be entitled to the consequential benefits, if not to reinstatement itself, only upon he showing how the order of dismissal was illegal. This cannot adjudicated unless the Respondents would be able to meet the case. After a period of two decades it would be impossible for the Respondents to meet the Petitioner' s case of illegality of the order of dismissal.

10. The Respondents have relied upon several judgments in which delay of 6years, 5 years, 3 years, 10 years etc., have been held to be uncondonable.

11. It is therefore seen that the condonation of delay, which is in the discretion of the court, must depend upon the facts of the case. In a similar case of Rakshak, who was amongst the 9 others dismissed by the Respondents, an order dated 15.12.2003 was passed by the Division Bench of this court in Writ Petition No. 4176 of 1996 dismissing the petition on the ground of inordinate delay, which was not satisfactorily explained.

12. Thus this Petition must also go the same way. In the

circumstances this Petition stands dismissed. Rule is discharged. There will be no order as to costs.

(SMT. R.S. DALVI J.) (R.M.S.KHANDEPARKAR J)